

TOWN OF STERLING
BOARD OF SELECTMEN
February 12, 2014

MEETING

Roll Call: Selectman Cutler - Present. Selectman Patacchiola – Present. Chairman Furmaniuk – Present. At 7:03 pm, Chairman Furmaniuk called the meeting to order.

Selectman Patacchiola moved the motion to approve the Board of Selectmen Minutes for January 22, 2014. Selectman Cutler 2nd. **VOTE:** Chairman Furmaniuk – Abstained. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Selectman Cutler made a motion to approve the Executive minutes of January 8, 2014. Those minutes not to be released until the issues have been resolved. **VOTE:** Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Monthly Police
Report

Chief Gary Chamberlain presented his monthly police report for January 2014. The following was included in that report.

Personnel, Training and Equipment:

- Hiring process update; written test was administered on 18 January. Those tests have been scored. Nine candidates will be taking a physical fitness assessment on 8 February. Next phase will be interviews with a panel of ranking police officials.
- Police and dispatch personnel are undergoing on-line certification of CJIS (criminal justice information system) and NCIC (national criminal information center) training.
- Sergeant Pomeroy is in the process of working on the computer system in order to be able operate the digital fingerprint unit when it arrives. Kitchen associates donated a counter top upon which the unit will be mounted. The chief publicly thanked them for their generous donation
- Letter of appreciation received from the Princeton Police department for Detective Johnson's assistance in a breaking and entering investigation.
- Attended a meeting with Fire, SMLD, DPW with NSTAR regarding gas pipeline response and notifications.
- Electrician installed a GFI and heat tape will be installed on a portion of the roof that leaks during icing. Facilities Technician has been working on this issue.
- Dog licensing has begun and residents should license their dogs with the Town Clerks office.
- Officer Lane Pomeroy attended social media investigation seminar.

Community Interaction:

- Sgt. Pomeroy and Officer Pomeroy gave a presentation on internet security at Hope Chapel.
- Sterling Police Twitter account was ranked **fourth** nation- wide, in Twitter followers for agencies with 1 to 15 Officers.
The Board of Selectman will send a certificate of congratulations to Officer Lane Pomeroy, who handles the police Department Twitter account.

GENERAL POLICE OPERATIONS:

- Received notification of acceptance of a \$5,000.00 MIIA Grant for a control access system.
- Fourteen (14) crashes were investigated during the month. One minor crash at the intersection of Chocksett and Leominster Roads. One significant crash at Worcester Road and Gates Rd.
- Thirty-one citations issued during seventy-five traffic stops.

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- There were five (5) arrests during the month.

School

Chairman Furmaniuk stated that the school committee was unable to attend. They will attend a future meeting.

24/7 Legal Postings

The Town Clerk has requested that the Board of Selectmen adopt the town website as the official 24/7 Posting method for all legal postings. This shall include meetings, agendas, Attorney General decisions, public hearings, continuances of Public Hearings and other matters. The Clerk's office will also continue to post meetings on the bulletin Boards, located outside the Clerk's office in the Butterick building and hard copies of legal postings are available for viewing in the Clerk's office during business hours. VOTE: Selectman Patacchiola moved the motion to adopt the Sterling town website, www.sterling-ma.gov as the official 24/7 posting method for all legal postings. Selectman Cutler 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Snow and Ice deficit spending

Superintendent Bill Tuttle had requested that the Board of Selectmen authorize deficit spending on snow/ice removal. With another storm expected tomorrow, he is confident that the line item on the budget will be over spent. After discussion, Chairman Furmaniuk made a motion to authorize deficit spending for snow and ice removal. Selectman Cutler 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Abstained. Motion carried.

OML Complaint

Chairman Furmaniuk read the following statement:

The Board received two Open Meeting Law complaints dated January 10, 2014. The first complaint related to the Board's December 4, 2013 meeting and the use of remote participation and the second complaint related to the Board's January 8, 2014 meeting and a citizen's request to record the meeting.

The complaints were forwarded to Town Counsel, but he was unable to complete his review prior to the Board's January 22, 2014 meeting. Upon completion of that review, however, and in consultation with the Chair, Town Counsel advised that no substantive response to the first complaint was needed because it was not filed in a timely manner. Counsel further advised that the records of the January 8th meeting reflected that the required statement was made by the chair, and to the extent that there was some confusion, it constituted, at most, a de minimis, violation as previously addressed by the Attorney General in similar circumstances. Because no remedial action appeared necessary and in order to preserve the Town's rights, the Chair authorized Town Counsel to write to the attorney general with a response to the complaint. Counsel advised that under such circumstances, the response should be ratified by the Board at its next meeting.

Town Counsel sent a letter to the Attorney General dated January 29, 2014. In that letter, which is available for review along with the minutes of this meeting, counsel represented the Board in defense of the complaints consistent with the advice given to the chair. Based on these circumstances, I move that the Board acknowledge receipt of the complaints and that it vote to accept Town Counsel's letter of January 29, 2014 as the official response of the Board. (attachment A)

VOTE: Selectman Cutler moved the motion that the Board of Selectmen acknowledge the receipt of the complaints dated January 10, 2014 and that they accept the Town Counsel's letter of January 29th, 2014 as the official response of the Select Board. Selectman Patacchiola 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

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Discuss the Board's position of possible Town Meeting Articles

The board discussed the following issues:

- Whether to disband the 1835 Town Hall Committee
- The Government study recommendation to amend the town bylaws to include/define boards and committees
- The Government Study recommendation to consider special legislation regarding the DPW

The consensus of the Board was that they would like the Town Administrator to draft the wording for these articles. The specifics and wording will be considered at a future meeting.

Business and Correspondence

Neighbor to Neighbor

After discussion; **VOTE:** Selectman Patacchiola made a motion to allocate the maximum \$1200.00 disbursement to the Neighbor to Neighbor applicant. \$800.00 will be issued for fuel oil and \$400.00 will be issued as gift certificates for groceries. Selectman Cutler 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Common Victualler Renewal

After discussion; **VOTE:** Selectman Cutler moved the motion to approve the renewal of the Common Victualler license for the Over Easy Café owned by Robyn Hale. Selectman Patacchiola 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Accept Resignation

After Discussion; **VOTE:** Selectman Patacchiola moved to accept the resignation of Phillip Campbell from the Housing Authority Board of Commissioners. Selectman Cutler 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Appointment to Fair Committee

After Discussion; **VOTE:** Selectman Cutler moved to appoint Kevin Day to the Fair Committee. Selectman Patacchiola 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Disband Town Administrator Search Committee – tabled

1 Day Alcohol License

After Discussion; **VOTE:** Chairman Furmaniuk moved a motion to approve a 1 day liquor license for the Eight Point Sportsmen's Club for their game supper on February 22, 2014 from 6:00 pm until midnight.. Selectman Cutler 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Town Administrator Update

Announcements;

- A letter of support was sent to Wachusett Greenways stating that Sterling will continue to provide support as in the past for the Rail Trail.
- A letter of appreciation from Sterling-Lancaster Community Television was read into the record. A \$1,200.00 check to the general fund for the town of Sterling was also donated.
- The Town Clerk visited and negotiated with the Sterling Municipal Light and they have agreed to reimburse the Town \$313.00 for expenses incurred, by the Town, on December 16, 2013 to host the Special Town Meeting.
- March 7th is the deadline for all annual reports from boards and committees to be submitted to the Town Clerk's office.
- The Board of Appeals will hold a Public Hearing on Tuesday, March 11, 2014 at 6:35 regarding proposed special permitting for 21 buildings at 43 Redstone Hill Road.
- There is an opening on the Economic Development Committee. Anyone interested in filling

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Public Session

this position should contact the office of the Board of Selectmen immediately.

- The final submission date for all Special and Annual Town Meeting articles is at 2:00pm on March 17, 2014.
- A new open meeting law complaint has been filed.

The following issues were brought forth during public session;

- Question regarding timeliness of Board of Selectmen's submissions of Open Meeting Law Compliance to the Attorney General's Office
- Update on the Wekepekee
- Deadline for citizen's article submissions for the Annual Town Meeting
- Request to re-visit decision regarding the Minuteman Bike race

Adjourned

VOTE: Selectman Patacchiola move the motion to Adjourn at 8:33. Selectman Cutler 2nd. Chairman Furmaniuk – Aye. Selectman Patacchiola – Aye. Selectman Cutler – Aye. Motion carried.

Materials list: memo and letter to AG regarding adoption of 24/7 posting method, Sterling Town Government Study recommendation materials, MGL 41 session 69E, General bylaws regarding DPW from Town website, Neighbor to Neighbor recommendation, common victualler license renewal application, Campbell resignation letter, appointment request for Fair Com., 1-day liquor application for Eight Point Sportsmen's Club, SLCT letter of appreciation

Public Session



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January 29, 2014

BY FACSIMILE – (617) 727-6016 and
BY FIRST CLASS MAIL

Amy L. Nable, Assistant Attorney General
Director, Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: Town of Sterling - Open Meeting Law Complaint – January 10, 2014

Dear Assistant Attorney General Nable:

The Board of Selectmen of the Town of Sterling has received the enclosed two complaints concerning alleged violations of the Open Meeting Law with respect to the Board's meetings of December 4, 2013 and January 8, 2014. With respect to the December 4, 2013 meeting, the Complainant alleges that the Board failed to properly employ the procedures for use of remote participation by a Board member, and with respect to the January 8, 2014 meeting, the Complainant alleges that the Chair failed to properly notify the public that the meeting was being recorded. I am hereby responding on behalf of the Board to both complaints as follows:

The December 4, 2013 Meeting

With regard to the complaint concerning the December 4, 2013 Meeting, it is the Board's position that you should decline to review this complaint because the complaint is untimely, insofar as the Board did not receive the complaint until January 10, 2014, thirty-seven (37) days after the date of the alleged violation. Pursuant to G.L. c. 30A, §23(b), complaints regarding alleged violations of the Open Meeting Law must be filed with the public body "within 30 days of the date of the alleged violation." Whereas the complaint in this matter was not filed with the Board of Selectmen within thirty days of the alleged violation, your office lacks jurisdiction to review the complaint.

This is not an appropriate circumstance to implement the tolling provisions of your regulations, which provide that "if the violation of [the Open Meeting Law] could not reasonably have been known at the time it occurred, then [the complaint must be filed] within 30 days of the date it should reasonably have been discovered." 940 CMR 29.05 (3). Here, the Complainant implies that he did not know of the alleged violation until the minutes of the December 4, 2013 meeting were published on January 18, 2014. The Complainant does not, however, allege that the alleged violation could not reasonably have been discovered within thirty days thereof. To the contrary, the alleged violation occurred at a properly posted public meeting that was broadcast on live television. In fact, the Complainant acknowledges that he was watching the broadcast at the time of the alleged violation.

Adjourned

KOPELMAN AND PAIGE, P.C.

Amy L. Nable, Assistant Attorney General
January 29, 2014
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As set forth in your decision dated May 21, 2012 (attached hereto for your reference), "[a]cts that take place during an open session meeting are discoverable at the time they occur. That the complainant chose not to attend that particular meeting does not change the fact that any member of the public could have attended the meeting and learned of the alleged violations on that date." The same reasoning applies here. The fact that one member of the Board was participating remotely would have been readily apparent to anyone in attendance at the meeting. Therefore, as the alleged violation could reasonably have been known at the time it occurred, there is no basis for extending the thirty-day time frame for filing a complaint. As such, your office lacks jurisdiction over this matter and the Board respectfully requests that you take no further action.

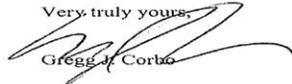
January 8, 2014 Meeting

With regard to the Board's January 8, 2014 meeting, it is the Board's position that the public was properly informed of the fact that the Complainant was recording the meeting. The official recording of the meeting is provided by Sterling Lancaster Community Television and can be accessed at the following web address: http://www.townhallstreams.com/locations/sterling-ma/events/18633/sterling_main. This official recording of the meeting, at approximately the 32:12 mark, clearly shows that the chair made the required announcement. Specifically, the Chair states "Would you please notify the chair if anyone is recording the meeting." After a brief pause he then states "Mr. Kumar and Mrs. Smith." It is the Board's position that these statements by the Chair satisfy the requirements of G.L. c. 30A, §20(e).

That the statements were made after the Board returned from executive session does not affect the validity or effectiveness of the announcement that was made. During its January 8, 2014 meeting, the Board opened the meeting at 6:30 p.m. in open session solely for the purpose of entering into executive session. Other than the making of a motion to enter executive session and a vote on that motion, no other public business was conducted and no public comment was made. The purpose of the announcement requirement is to ensure compliance with the so-called "Anti-Wire Tap" law, G.L. c.272, §99, which prohibits the recording of an individual without his or her knowledge. Since there was no public participation prior to the announcement by the chair that the meeting was being recorded by the Complainant, any violation that occurred as a result of not making the announcement sooner was *de minimis*. See OML 2013-128. The Board, therefore, respectfully requests that you take no further action with respect to this complaint.

Please do not hesitate to contact me if you have any questions in this regard.

Very truly yours,



Gregg J. Corbo

GJC/lem
Enc.
cc: Board of Selectmen
Mr. Amrith Kumar
490589/28200/0001

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